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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,337	10/21/2003	Kenneth J. Juncker	AG-117US	2196
24314	7590	04/26/2005	EXAMINER	
JANSSON, SHUPE & MUNGER, LTD 245 MAIN STREET RACINE, WI 53403			NOVOSAD, CHRISTOPHER J	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,337

Applicant(s)

JUNCKER, KENNETH J.

Examiner

Christopher J. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 25-38 and 40 is/are rejected.
- 7) ☒ Claim(s) 19-24 and 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Withdrawal of Restriction Requirement

The restriction requirement made in the previous Office action, dated 02/07/2005 has been withdrawn in view of applicant's traversal thereof.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, line 1, it is unclear of what the "first end" is referring to.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Clausen.

With respect to claim 1, Clausen shows an earth working scraper (Figs. 1-3) comprising:

a scraper blade 10 for scraping earth from a ground surface;

a receiving area (Fig. 3, right side) located near the blade for receiving earth scraped from the ground surface by the blade 10;

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a rotatable axle (necessarily present in Fig. 1) for providing movement of the scraper (Figs. 1-3) to allow the blade 10 to scrape the earth, the axle (necessarily present in Fig. 1) connected with respect to the blade 10 and receiving area (right side of Fig. 3); and

a track apparatus (unnumbered) connected with respect to the rotatable axle (necessarily present in Fig. 1), the track apparatus (unnumbered) including:

a continuous flexible track (unnumbered) having an upper length (unnumbered) and a ground-engaging lower length (unnumbered) and including an inner surface (unnumbered);

an axle wheel (unnumbered) mountable to the rotatable axle (necessarily present in Fig. 1) for rotational movement therewith, the axle wheel (unnumbered) engaging the inner surface of the flexible track (unnumbered) along the upper length (unnumbered) to drive the flexible track (unnumbered) in response to rotation of the axle (necessarily present in Fig. 1); and

a frame (unnumbered) for mounting the axle wheel (unnumbered).

As to claim 2, a first end (unnumbered) is adapted for attachment to a prime mover (unnumbered) and a second end (unnumbered) includes the rotatable axle (necessarily present in Fig. 1).

Regarding claim 3, two track apparatus (unnumbered) are positioned at the second end (unnumbered) and axially aligned.

With respect to claim 5, the scraper (Figs. 1-3) is connected to the prime mover (unnumbered) by a hitch (unnumbered).

As to claim 6, the rotatable axle (necessarily present in Fig. 1) is necessarily powered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4, 7-10, 36-38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clausen in view of Wigoda.

Clausen shows the structure of the scraper as noted.

With respect to new independent claim 36, Clausen discloses an earth working scraper comprising:

a scraper blade (10) for scraping earth from the ground surface;

a receiving area (Fig. 3, right side) located near the blade for receiving the earth scraped from the ground by the scraper blade (10).

an axle (unnumbered, necessarily present in Fig. 1) for carrying the scraper blade (10);

a rotatable axle wheel (unnumbered, Fig. 1) connected to the axle and having a plurality of spaced-apart drive members (teeth on drive wheel, Fig. 1) along the circumferential edge thereof;

a track having lugs (Fig. 1) formed along an inner surface thereof, the lugs being configured for meshing engagement with the drive members (teeth on drive wheel, Fig. 1) of the wheel.

With respect to dependent claim 37, Clausen shows “an idler wheel tensioned against the inner surface of the track.” The leading wheel (unnumbered, Fig. 1) of Clausen is an idler wheel, i.e. not a driving wheel, and is shown to be mounted on what appears to be a pivot arm that is pivotally mounted to the frame. The combined weight of the vehicle frame with cab (12), power

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source (14), and blade attachment (10) acts downwardly on the trailing end of the pivot arm and causes the leading end thereof (rotatably connected to the leading idler wheel) to force the leading idler wheel outwardly (forwardly) relative to the frame such that the “idler wheel” is “tensioned against the inner surface of the track” as called for in claim 37.

As to claim 38, the tensioning device reads on the pivoting member (unnumbered) to which the leading wheel is rotatably attached. The pivoting member acts as a tensioning device due to the weight of the frame.

The claims distinguish over Clausen in requiring (1) the scraper to be a pull-type scraper such that it is towed by the prime mover and the rotatable axle of the scraper is not powered (as required in claim 4); (2) the receiving area to be an interior bin, the interior bin to be located adjacent to the scraper blade (as required in claim 7); (3) a tractor section and a scraper section, the scraper section to include the blade, receiving area, axle and track apparatus, the tractor section to include a pair of ground-engaging wheels (as required in claim 8); (4) the ground engaging wheels to be powered (as required in claim 9); (5) the rotatable axle to be powered (as required in claim 10); and (6) a “receptacle” to be the receiving area for the earth scraped by the scraper blade (as required in claims 36 and 40).

Wigoda shows (1) a scraper 24 being a pull-type scraper such that it is towed by the prime mover 12 and the rotatable axle (unnumbered; pin connecting 24 and 14) of the scraper 24 is not powered (as required in claim 4); (2) the receiving area 14 is an interior bin 14, the interior bin 14 is located adjacent to the scraper blade 6 or 24 (as required in claim 7); (3) a tractor section 12 and a scraper section 6 or 24, the scraper section 6 or 24 including the blade 6 or 24, receiving area 14, axle (unnumbered) and track apparatus, the tractor section 12 including a pair

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of ground-engaging wheels 22 (as required in claim 8); (4) the ground engaging wheels 22 being powered (as required in claim 9); and (5) the rotatable axle (unnumbered) being powered (as required in claim 10). With respect to (6), the secondary reference to Wigoda discloses a scraper machine (10, Fig. 1) comprising scraper blades (6, 24), a prime mover (12), and shows it to be conventional to use a container or receptacle (14) as a receiving area for the earth scraped by the scraper blade (24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the structure noted of Wigoda in the apparatus of Clausen for greater versatility of use.

Claims 12-18, 25-33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clausen in view of Kelderman.

Clausen shows the scraper as noted.

With respect to claim 12, Clausen shows a track apparatus (unnumbered) that further includes a plurality of wheels (unnumbered) engaging the inner surface (unnumbered) of the track (unnumbered), including leading (unnumbered) and trailing (unnumbered) idler wheels, and wherein:

the frame (unnumbered) is of a uni-body construction (note Fig. 1) such that it includes fixed-mounts (unnumbered) in fixed relative positions (unnumbered), each fixed-mount (unnumbered) defining an axis (unnumbered);

the axle wheel (unnumbered) is rotatably mounted to one of the fixed-mounts (unnumbered) and turns on the respective fixed-mount axis (unnumbered);

one of the idler wheels (unnumbered) is rotatably mounted to one of the fixed-mounts (unnumbered) and turns on the respective fixed-mount axis (unnumbered).

As to claim 13, Clausen shows that the frame (unnumbered) defines a lateral recess (unnumbered) receiving the axle wheel (unnumbered).

Regarding claim 14, the frame (unnumbered) of Clausen includes a spindle hub (unnumbered) for rotatably receiving the rotatable axle (unnumbered).

With respect to claim 15, the fixed-mounts (unnumbered) comprise apertures (unnumbered) for receiving axles (unnumbered) therethrough.

As to claim 16, the trailing idler wheel (unnumbered) is rotatably mounted to one of the fixed-mounts (unnumbered) and the leading idler wheel (unnumbered) is rotatably mounted to the idler-mount (unnumbered).

Regarding claim 17, the trailing idler wheel (unnumbered) comprises a pair of axially-aligned wheels (unnumbered, since two tracks, unnumbered, are present) and the leading idler wheel (unnumbered) comprises a pair of axially-aligned wheels (unnumbered, since two tracks, unnumbered, are present).

With respect to claim 18, the track apparatus (Fig. 1) further comprises a leading idler assembly (unnumbered) attached to the frame (unnumbered) at one of the fixed mounts (unnumbered), the leading idler assembly (unnumbered) including the leading idler wheel (unnumbered) engaging the flexible track (unnumbered).

The claims distinguish over Clausen in requiring (1) at least one bogie wheel to engage only a middle portion of the lower length of the track, the at least one bogie wheel to be rotatably mounted to one of the fixed-mounts and to turn on the respective fixed-mount axis, and an idler-

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mounting bracket to be pivotably mounted to another of the fixed-mounts and to pivot on the respective fixed-mount axis, the bracket to have an idler-mount defining an idler-mount axis at which the other idler wheel is rotatably mounted in variable positions with respect to the frame; (as required in claim 12); (2) the flexible track to include spaced lugs projecting from the inner surface, each lug terminating in a distal surface spaced inwardly from the main inner surface, and wherein the axle wheel comprises:

a central hub portion mountable on the axle for rotational movement therewith;

a radially-extending portion terminating in a circumferential edge; and

a peripheral portion affixed to the circumferential edge and having outwardly-facing lug-engagement surfaces positioned for engagement with the distal surfaces of the track lugs (as required in claim 25); (3) the peripheral portion to include an outer rim forming the outwardly-facing lug-engaging surfaces (as required in claim 26); (4) the outer rim to include a plurality of spaced openings therein (as required in claim 27); (5) the peripheral portion to include peripherally-spaced cross-members affixed to the circumferential edge and forming the outwardly-facing lug-engaging surfaces (as required in claim 28); (6) the axle wheel to be substantially free of side structure in positions laterally adjacent to the lug-engagement surfaces and radially beyond the circumferential edge, whereby the track lugs are free to adjust their precise positions of engagement with the lug-engagement surfaces (as required in claim 29); (7) the outwardly-facing lug-engagement surfaces to be substantially planar (as required in claim 30); (8) the peripheral portion affixed to the circumferential edge to have radially-projecting drive members defining lug-receiving gaps therebetween, the outwardly-facing lug-engagement surfaces to be within the lug-receiving gaps in position for engagement with the distal surfaces of

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the track lugs, and the axle wheel to be substantially free of side structure in positions which are laterally adjacent to the lug-engagement surfaces between adjacent pairs of the drive members and radially beyond the circumferential edge, whereby the track lugs are free to adjust their precise positions of engagement with the lug-engagement surfaces (as required in claim 31); (8) the peripheral portion to include a plurality of spaced openings for allowing debris to pass through the peripheral portion (as required in claim 32); (9) the outwardly-facing lug-engagement surfaces to be substantially convex (as required in claim 33); and (10) the axle wheel to be substantially free of side structure in positions which are laterally adjacent to the lug-engagement surfaces between adjacent pairs of the drive members and radially beyond the circumferential edge, whereby the track lugs are free to adjust their precise positions of engagement with the lug-engagement surfaces (as required in claim 35).

Kelderman shows (1) at least one bogie wheel 102 that engages only a middle portion (unnumbered) of the lower length (unnumbered) of a track 219, the at least one bogie wheel 102 being rotatably mounted to one of the fixed-mounts (unnumbered) turning on the respective fixed-mount axis (unnumbered), and an idler-mounting bracket 26,28 that is pivotably mounted to another of the fixed-mounts (unnumbered) and pivots on the respective fixed-mount axis (unnumbered), the bracket 26,28 having an idler-mount (unnumbered) defining an idler-mount axis (unnumbered) at which the other idler wheel 29 is rotatably mounted in variable positions with respect to the frame; (as required in claim 12); (2) the flexible track 219 including spaced lugs 220 projecting from the inner surface (unnumbered), each lug 220 terminating in a distal surface (unnumbered) spaced inwardly from the main inner surface (unnumbered), and the axle wheel comprising:

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a central hub portion (unnumbered) mountable on the axle 21 for rotational movement therewith;

a radially-extending portion (unnumbered) terminating in a circumferential edge (unnumbered); and

a peripheral portion (unnumbered) affixed to the circumferential edge (unnumbered) and having outwardly-facing lug-engagement surfaces 51,53 positioned for engagement with the distal surfaces (unnumbered) of the track lugs 220 (as required in claim 25); (3) the peripheral portion (unnumbered) including an outer rim (unnumbered) forming the outwardly-facing lug-engaging surfaces 51,53 (as required in claim 26); (4) the outer rim (unnumbered) including a plurality of spaced openings (between members 51,53) therein (as required in claim 27); (5) the peripheral portion (unnumbered) including peripherally-spaced cross-members 51,53 affixed to the circumferential edge (unnumbered) and forming the outwardly-facing lug-engaging surfaces 51,53 (as required in claim 28); (6) the axle wheel 425 being substantially free of side structure in positions laterally adjacent to the lug-engagement surfaces 51,53 and radially beyond the circumferential edge (unnumbered), whereby the track lugs 220 are free to adjust their precise positions of engagement with the lug-engagement surfaces 51,53 (as required in claim 29); (7) the outwardly-facing lug-engagement surfaces 51,53 being substantially planar (as required in claim 30); (8) the peripheral portion (unnumbered) being affixed to the circumferential edge (unnumbered) to have radially-projecting drive members 51,53 defining lug-receiving gaps (unnumbered) therebetween, the outwardly-facing lug-engagement surfaces 51,53 being within the lug-receiving gaps (unnumbered) in position for engagement with the distal surfaces (unnumbered) of the track lugs 220, and the axle wheel 425 being substantially free of side

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structure in positions which are laterally adjacent to the lug-engagement surfaces 51,53 between adjacent pairs of the drive members 51,53 and radially beyond the circumferential edge (unnumbered), whereby the track lugs 220 are free to adjust their precise positions of engagement with the lug-engagement surfaces 51,53 (as required in claim 31); (8) the peripheral portion (unnumbered) including a plurality of spaced openings (unnumbered) for allowing debris to pass through the peripheral portion (unnumbered) (as required in claim 32); (9) the outwardly-facing lug-engagement surfaces 51,53 being substantially convex (as required in claim 33); and (10) the axle wheel 425 being substantially free of side structure in positions which are laterally adjacent to the lug-engagement surfaces 51,53 between adjacent pairs of the drive members 51,53 and radially beyond the circumferential edge (unnumbered), whereby the track lugs 220 are free to adjust their precise positions of engagement with the lug-engagement surfaces 51,53 (as required in claim 35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the structure noted of Kelderman in the apparatus of Clausen for greater versatility of use.

Response to Arguments

Answer to the Arguments - 35 USC § 102 Rejections

Applicant's argument that Clausen does not teach or suggest a receiving area located proximate the blade for receiving earth scraped from the ground surface by the blade is considered to be more limited than the claim language, and therefore is not persuasive. The "receiving area", while not being attached to or a structural part of the scraper of the machine of

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Clausen, as argued by applicant, nevertheless meets the terms of parent claim 1 which only requires the “receiving area” to be “located *proximate* the blade” (emphasis added). Thus, the claim language does not require the “receiving area” to be structurally connected to the device, as now claimed.

Applicant further argues that Clausen does not teach or suggest a rotatable axle for providing movement of the scraper to allow the blade to scrape the earth “because *Clausen*, as shown in Figs. 1, 2, 3, 5 and 8, apparently raises and lowers the attachment 10 using cylinders that are a part of the vehicle 12” rather than “using any sort of rotatable axle.” This argument, however, is inapposite or clearly not relevant to the rejection, and therefore is not persuasive because the “rotatable axle” referred to by the examiner in the rejection is the essential rotatable *drive* axle in Clausen (not shown, Fig. 1) that would necessarily have to be present to rotatably drive the toothed-driving wheel (unnumbered in Fig. 1) for driving the individual (right-side) track of the *vehicle* (12) and thus propelling the vehicle and the attached blade; *not* the track 16 of the attachment 10 as argued by applicant. The “track 16” referred to by applicant in the argument has nothing whatsoever to do with the ground-engaging track of the vehicle (Fig. 1) of Clausen relied on by the examiner in the rejection.

Answer to the Arguments - 35 USC § 103 Rejections

Applicant argues that in the proposed modification of *Clausen* in view of *Wigoda* “it would be necessary to change the orientation of the track 16 of Clausen by 90 degrees, and it would be necessary for such track 16 to engage the ground. These arguments are not persuasive because a receptacle obviously could be attached laterally to the trailing side panel (20) of the

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attachment (blade 10) to receive the scraped earth without having to reorient the track (16) by 90 degrees. Moreover, the track 16 would not have to engage the ground for the proposed modification, because being off the ground, as normally intended, the track could still move or convey the scraped earth laterally into an attached receptacle.

The argument that “the container of *Wigoda* does not meet the above-noted limitations of the claimed receiving area because the container 14 is not located for receiving earth scraped from the ground by a blade such as is claimed” is not persuasive because the claim is still broad enough to include the location of the container 14 as disclosed in the *Wigoda* reference. The container 14, while not being located immediately adjacent to said blade - as apparently narrowly interpreted by applicant - is nevertheless still located “for receiving earth scraped from the ground surface by the blade,” as broadly recited. The word “proximate” substituted for the word “near” in claim 1, as amended, does not further limit the claim. “Proximate” is considered to be the same as “near.” (See *Roget's Thesaurus of English words and phrases*, 1982 edition, pages 200 and 1059).

Applicant's argument regarding the application of *Kelderman* as a secondary reference is considered to be inapposite, or not relevant to the rejection, and therefore is not convincing. This argument is primarily based on the previous argument relating to the alleged impropriety of the combination of *Clausen* in view of *Wigoda*, which has been answered above. The specific argument that *Kelderman* “does not teach or suggest the claimed receiving area, or a rotatable axle for providing movement of the scraper to allow the blade to scrape the earth, the axle being connected with respect to the blade and receiving area” is not relevant here because the claimed “receiving area” and “rotatable axle” are elements already met by the primary reference to

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Clausen. The *Kelderman* reference was not relied on to meet the above-argued basic elements of the primary reference, but was relied on for other claimed elements, such as the “bogie wheel,” etc., as specifically pointed out in detail in pages 8-10 of the Office action, dated 07/26/2004. Accordingly, the argument as to *Kelderman* is not persuasive for the reason given above.

Allowable Subject Matter

Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 19-24 and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

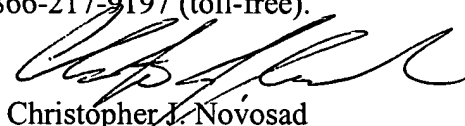
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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

April 20, 2005